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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/643,824

08/18/2003

Ernest Peter Nelson

152.001

5165

9809

7590

01/07/2009

KEELING PATENTS AND TRADEMARKS  
3310 KATY FREEWAY, SUITE 100  
HOUSTON, TX 77007

EXAMINER

DOUGLAS, STEVEN O

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

01/07/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/643,824	<b>Applicant(s)</b> NELSON ET AL.	
	<b>Examiner</b> /Steven O. Douglas/	<b>Art Unit</b> 3771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-61,63-71 and 73-77 is/are pending in the application.
- 4a) Of the above claim(s) 1-32,42-61 and 63 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 74-77 is/are allowed.
- 6) ☒ Claim(s) 33-37,40,61-68 and 71 is/are rejected.
- 7) ☒ Claim(s) 38,39,41,69,70 and 73 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 33-37, 40, 64-68 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizrachy et al. (3,853,121) in view of Pickup et al. ("The effect of cycloid vibration on leg blood flow and ulcer pain, July 1978) and Lievens ("The Use of Cycloidal Vibrations Therapy on the Blood and Lymphocirculation and on Wound Healing, 1979).

3. Mizrachy discloses a device having a drive unit 20 and a pad 11 (fig. 3) and a method of using the device for stimulating muscle activity and blood circulation, see col. 4, lines 63-65, which method comprises the step of subjecting the body to mechanical vibrations (col. 4, line 29-32) for an effective period of time and wherein pressure is applied to a body area (via straps 13/14, fig. 3) by the device subjecting the body to the mechanical vibration. Mizrachy teaches a method comprises the step of subjecting a body in the area to a mechanical vibrations (by means of 20, fig. 3) concurrently with the application of pressure (by means of pad 11 and straps 13 and 14 as shown in fig. 3) to the same area (a leg as shown in fig. 3) for an effective period of time. Mizrachy is silent regarding the use of the device for the healing and treatment of ulcers and

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symptoms of lymphoedema by the cycloid vibrations having components in three orthogonal directions, a frequency of between 15 and 75 Hz and an amplitude of between 0.1 and 0.5 mm. However, Pickup et al. teaches that relief of pain and improvement of ulcer treatment have been reported when cycloid vibration therapy (CVT) was applied to a number patients at frequency of 50-60 Hz for 30 minutes, three times a day. Furthermore, Lievens also teaches cycloidal vibration therapy for improving blood and lymph circulation, wherein CVT is provided with a vibration device having a three-dimensional cycloidal movement along three orthogonal directions X axis, Y axis and Z axis (see fig. 1 on p. 2) and an amplitude of +0.5 – 1 mm. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to operate the device in the Mizrachy's reference to treat and heal ulcers and treat symptoms of lymphoedema in view of the collective teachings of the Pickup et al. and Lievens references which show that vibrational stimulation is conventionally known for the treatment of ulcers and lymphoedema, in so doing the device would provide a cycloid vibration therapy having components in three orthogonal directions at a frequency of between 15 and 75 Hz and an amplitude of between 0.1 and 0.5 mm for 30 minutes, three times a day, as suggested and taught by Pickup et al. and Lievens, for the purpose of providing pain relief, improving ulcer treatment and enhancing blood circulation.

***Allowable Subject Matter***

Claims 74-77 are allowed.

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Claims 38,39,41,69,70 and 73 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to the have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Steven O. Douglas/ whose telephone number is (571) 272-4885. The examiner can normally be reached on Mon-Thurs 6:30-5:00.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven O. Douglas/  
Primary Examiner  
Art Unit 3771

SD  
1/5/09